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13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
16

17 PJAM LLC,
18 Plaintiff,
19 vs.
20 XX GLOBAL, INC., JACQUES
21 WEBSTER, and DOES 1-20, inclusive,
22 Defendants.
23

CASE NO.: 2:18-cv-03192 JFW
(MRWx)

Hon. John F. Walter

**JOINT MOTION IN LIMINE NO. 2:
MOTION OF DEFENDANTS AND
COUNTERCLAIMANTS XX
GLOBAL, INC. AND JACQUES
WEBSTER TO PRECLUDE ANY
REFERENCE TO TRAVIS SCOTT
MISSING OTHER
PERFORMANCES**

24 XX GLOBAL, INC. and JACQUES
25 WEBSTER,
26

Counterclaimants,

27 vs.
28

PJAM LLC, JEFFERSON AGAR,
ALEX MARTINI, PATRICK
JOHNSTON, and ROES 1 through 10,
inclusive,

Counterclaim Defendants.

Hearing Date: April 5, 2019

Hearing Time: 10 a.m.

Pre-Trial Conf.: March 29, 2019

Trial Date: April 9, 2019

Action Commenced: March 20, 2018

1 Defendants and Counterclaimants XX Global, Inc. and Jacques Webster
 2 (together, "Defendants"), by and through their counsel of record, and Plaintiff and
 3 Counterclaim Defendant PJAM LLC ("Plaintiff"), by and through its counsel of
 4 record, hereby file this Joint Motion in Limine No. 2 to preclude at trial any
 5 reference to Mr. Webster (p/k/a Travis Scott) missing other performances.

6 This Motion is based upon the accompanying memorandum of points and
 7 authorities and exhibits thereto, and declaration of Matthew Cave, the files and
 8 records in this case, and such further evidence and argument as the Court may
 9 permit.

10
 11 DATED: March 14, 2019

KING, HOLMES, PATERNO &
 SORIANO, LLP

12
 13
 14 By: /s/ Howard E. King

15 HOWARD E. KING

16 MATTHEW J. CAVE

17 Attorneys for Defendants and
 18 Counterclaimants XX GLOBAL, INC. and
 JACQUES WEBSTER

19 DATED: March 14, 2019

HILL, FARRER & BURRIL LLP

20
 21
 22 By: /s/ Stephen J. Tomasulo

23 STEPHEN J. TOMASULO

24 Attorneys for Plaintiff and Counterclaim
 25 Defendant PJAM LLC, and Counterclaim
 26 Defendants JEFFERSON AGAR, ALEX
 27 MARTINI and PATRICK JOHNSTON
 28

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I.

JOINT MOTION IN LIMINE NO. 2: DEFENDANTS' MOTION TO
PRECLUDE ANY REFERENCE TO TRAVIS SCOTT
MISSING OTHER PERFORMANCES

A. **Identification of the Matters in Dispute**

Defendants and Counterclaimants XX Global, Inc. and Jacques Webster (together, "Defendants") seek to preclude any reference to Mr. Webster (p/k/a Travis Scott) missing scheduled performances, for any reason, other than the event at issue in this case, because such information is irrelevant, unfairly prejudicial, and may mislead and confuse the jury.

Plaintiff and Counterclaim Defendant PJAM LLC ("PJAM") contends that Mr. Webster's failure to appear at other performances is relevant and is not unfairly prejudicial, misleading, or confusing.

II.

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIESA. **Background**

Counsel met and conferred pursuant to this Court's Local Rules and the Scheduling and Case Management Order. During the meet and confer, PJAM's counsel stated that he will likely ask Mr. Webster questions during his cross-examination at trial about other performances that Mr. Webster has missed, some of which have been reported on in the media. Declaration of Matthew Cave ("Cave Decl.") ¶ 2. Counsel disagreed on the relevance of this topic and whether raising it would be unfairly prejudicial to Defendants or misleading or confusing for the jury. *Id.* Accordingly, this motion in limine is being brought by Defendants to preclude any reference to Mr. Webster missing performances, for any reason, other than the one at issue in this case.

B. **Legal Standard**

Relevant evidence is admissible, whereas irrelevant evidence is not. Fed. R.

1 Evid. 402. Evidence is relevant if “it has any tendency to make a fact more or less
 2 probable than it would be without the evidence,” and “the fact is of consequence in
 3 determining the action.” Fed. R. Evid. 401(a)-(b). Even relevant evidence should
 4 be excluded where “its probative value is substantially outweighed” by the danger of
 5 “unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting
 6 time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. Trial
 7 courts have broad discretion to exclude evidence that is irrelevant or improper under
 8 Rule 403. *See, e.g., United States v. Layton*, 767 F.2d 549, 553 (9th Cir. 1985)
 9 (“The district court’s admission or exclusion of evidence under Rule 403 will be
 10 reversed only if it was an abuse of discretion.”).

11 C. Argument

12 This is a straightforward breach of contract action. Other than determining
 13 appropriate damages, the only questions to be answered by the jury are (1) whether
 14 PJAM breached the contract at issue by failing to arrange and confirm transportation
 15 that would ensure Mr. Webster’s arrival in Las Vegas by 1:00 a.m. PST for his
 16 previously scheduled show at Marquee Nightclub, and (2) whether Defendants
 17 breached the contract by Mr. Webster failing to travel to Minnesota and perform at
 18 the pre-Super Bowl event despite PJAM not arranging transportation for him to
 19 timely get to Las Vegas afterwards. References (statements, questions, etc.) to other
 20 performances that Mr. Webster has missed—for reasons that may have absolutely
 21 nothing to do with why Mr. Webster did not appear at the event at issue in this
 22 case—do not bear on any question of fact or law before the jury, and therefore are
 23 irrelevant. *See* Fed. R. Evid. 402(b); *Bancroft Life & Cas. v. Lo*, No. 12CV1431,
 24 2013 WL 6440956, at *4 (W.D. Pa. Dec. 9, 2013) (granting motion in limine to
 25 preclude evidence related to breaches of contracts not at issue in the case, and
 26 limiting the plaintiff “to offer evidence to prove that it sustained recoverable
 27 damages for the two (2) contracts that were attached to its Complaint”); *Too Tall*
 28 *Inc. v. Sara Lee Bakery Grp., Inc.*, No. CV 08-191 JP/WDS, 2009 WL 10665809, at

1 *1 (D.N.M. Oct. 19, 2009) (granting motion in limine to preclude evidence related
2 to “any other contract cases that attracted media attention” as irrelevant and highly
3 prejudicial).

4 Even if evidence related to other performances that Mr. Webster has missed
5 were somehow relevant, the Court should preclude any reference to such evidence
6 because it would be unfairly prejudicial to Defendants and would mislead and
7 confuse the jury. *See* Fed. R. Evid. 403. For example, references to Mr. Webster
8 missing a few other performances—out of the hundreds of performances he
9 currently puts on each year—would distract the jury from the one contract at issue
10 and the alleged breaches of that contract. This could lead to several mini-trials
11 (within the main trial) regarding the various reasons why Mr. Webster missed other
12 shows—none of which would be relevant here, and all of which would confuse and
13 muddle the issues in this case. Such references may also cause jurors to unfairly
14 infer that Mr. Webster has a pattern of missing performances that his fans pay to
15 attend, which could stir up emotions for any juror who has attended a concert or
16 other event where the scheduled performer failed to show up or perform.
17 Accordingly, any reference to other performances that Mr. Webster has missed
18 should be precluded under Rule 403.

19 **D. Conclusion**

20 For the reasons set forth herein, Defendants respectfully request that the Court
21 grant this motion in limine.

22 **III.**

23 **PJAM’S MEMORANDUM OF POINTS AND AUTHORITIES**

24 **A. Introduction**

25 Defendants ask the Court to exclude evidence of Mr. Webster’s habit of
26 cancelling performances at the last minute. Mr. Webster is famous for, among other
27 things, fathering a Kardashian child. It is no coincidence that he cancelled the
28 performance at issue in this lawsuit just two days after the much-anticipated birth.

1 This was not the first or last time Mr. Webster cancelled a performance on short
 2 notice. He has a well-documented habit of cancelling performances when personal
 3 issues overcome contractual obligations. Such evidence is admissible because it
 4 tends to suggest Defendants' excuse for Mr. Weber's last minute cancellation is
 5 disingenuous. Any prejudice of such evidence is far outweighed by its probative
 6 value.

7 **B. Legal Standard**

8 Evidence is relevant if "it has any tendency to make a fact more or less
 9 probative than it would be without the evidence" and "the fact is of consequence in
 10 determining the action." Fed. R. Evid. 401. "[I]n weighing the factors under Rule
 11 403, the court should generally give the evidence its maximum reasonable probative
 12 force and its minimum reasonable prejudicial value." *SEC v. Peters*, 978 F.2d 1162,
 13 1171 (10th Cir. 1992). The prejudice to be weighed is only "the unfair prejudice
 14 caused by admission of the evidence. Evidence that is prejudicial only in the sense
 15 that it paints the defendant in a bad light is not unfairly prejudicial." *U.S. v. Deitz*,
 16 577 F.3d 672, 688 (6th Cir. 2009). "Existence of a person's habit...may be admitted
 17 to prove that on a particular occasion the person...acted in accordance with the habit
 18 or routine practice. The court may admit this evidence regardless of whether it is
 19 corroborated or whether there was an eyewitness." Fed. R. Evid. 406.

20 **C. Argument**

21 Defendants seek to exclude the subject evidence on the grounds it is
 22 irrelevant. Fed. R. Evid. 402. Alternatively, Defendants argue that, even if relevant,
 23 the evidence should be excluded because its probative value is outweighed by the
 24 danger of unfair prejudice. Fed. R. Evid. 403. These arguments are without merit.

25 Plaintiff believes the evidence will show that Mr. Webster has cancelled
 26 numerous performances at the last minute, as reported by various news outlets:

- 27 • February 16, 2016 – Mr. Webster is a "no show" at a club in
 28 Toronto. He later apologizes and reschedules. Declaration of

1 Stephen Tomasulo (“Tomasulo Decl.”), Exh. A.

- 2 • August 22, 2016 – Two performances in Ireland cancelled the
- 3 week of the shows so Mr. Webster could finish an album. The
- 4 reason given was “album mixes delay.” Declaration of Stephen
- 5 Tomasulo (“Tomasulo Decl.”), Exhs. B-C.
- 6 • October 4, 2016 – Mr. Webster cancels a performance in New
- 7 Zealand the day before the show due to an “unforeseen
- 8 commitment.” *Id.*, Exh. D.
- 9 • February 3, 2018 – This case. Performance cancelled
- 10 immediately after Kylie Kardashian gives birth to his child. Mr.
- 11 Webster blames inadequate travel arrangements.
- 12 • November 12, 2018 – Mr. Webster postpones a performance in
- 13 Florida the day of the show due to “technical production issues.”
- 14 Additional shows scheduled in Hartford (Nov 30), Cleveland
- 15 (Dec 4) and Milwaukee (Dec 9) are also postponed. *Id.*, Exh. E.
- 16 • February 11, 2019 – Mr. Webster postpones a performance in
- 17 Tulsa thirty minutes before the doors were scheduled to open due
- 18 to “production issues.” *Id.*, Exh. F.
- 19 • February 28, 2019 – Performance in Buffalo cancelled the day of
- 20 the event after Kylie Kardashian accuses Mr. Webster of
- 21 cheating. Mr. Webster claims he was “under the weather.” *Id.*,
- 22 Exhs. G-H.
- 23 • March 2, 2019 – Mr. Webster double-books himself at Madison
- 24 Square Garden and at a festival in Indio, CA. He cancels his
- 25 festival appearance “at the last minute” after having been paid a
- 26 \$217,000 deposit, resulting in the cancellation of the festival.
- 27 *Id.*, Exhs. I-J.

28 Plaintiff reasonably believes that this evidence will establish Mr. Webster’s

1 history of putting personal ventures ahead of contractual obligations. The jury is
2 permitted to consider any evidence that “has any tendency to make a fact more or
3 less probative than it would be without the evidence.” Fed. R. Evid. 401. Evidence
4 of other last minute cancellations rises to the level of a habit, puts Mr. Webster’s
5 credibility at issue, and is thus a proper subject of inquiry at trial. The fact Mr.
6 Webster’s other cancellations may paint him in a bad light is not the type of unfair
7 prejudice subject to exclusion. *U.S. v. Deitz, supra*, 577 F.3d at 688.

8 Defendants cite *Bancroft Life & Cas. v. Lo*, No. 12CV1431, 2013 WL
9 6440956, at *4 (W.D. Pa. Dec. 9, 2013) for the proposition that evidence prior
10 breaches of contract are not admissible. In *Bancroft Life*, however, the issue was
11 whether the plaintiff could introduce evidence to prove “it sustained recoverable
12 damages for the breach of” contracts not attached to its complaint. *Id.* at *4. The
13 excluded the evidence for that purpose, but allowed it so plaintiff could “defend
14 itself from the fraud and other remaining counterclaims which call into question the
15 entire Bancroft Program with documentation beyond the documents comprising the
16 two [contracts].” *Id.* at *5. Here, Plaintiff is not offering evidence of Mr. Webster’s
17 conduct to recover damages for claims not issue in the lawsuit.

18 Defendants also rely on *Too Tall Inc. v. Sara Lee Bakery Grp., Inc.*, No. CV
19 08-191 JP/WDS, 2009 WL 10665809, at *1 (D.N.M. Oct. 19, 2009) in which the
20 court precluded evidence of “any other contract cases that attracted media
21 attention.” The order does not state what contract cases were at issue or whether
22 they involved any of the parties to the case. Here, Plaintiff is not offering evidence
23 of the existence of other lawsuits, but rather evidence of Mr. Webster’s habit of last-
24 minute cancellations.

25 Plaintiff is being accused in Defendants’ counterclaim of acting in bad faith
26 by preventing Mr. Webster from performing and precluding him from booking other
27 performances. Defendants have put Mr. Webster’s own attendance problems at
28 issue, and Plaintiff should be permitted to present this evidence at trial to challenge

1 Mr. Webster's credibility and otherwise defend itself against such claims at trial.

2 **D. Conclusion**

3 The motion should be denied. Plaintiff should be permitted to introduce
4 evidence of other instances in which Mr. Weber cancelled performances to pursue
5 personal ventures or tend to other commitments.

6
7 DATED: March 14, 2019

KING, HOLMES, PATERNO &
SORIANO, LLP

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9
10 By: /s/ Howard E. King

11 HOWARD E. KING

12 MATTHEW J. CAVE

13 Attorneys for Defendants and
14 Counterclaimants XX GLOBAL, INC. and
JACQUES WEBSTER

15 DATED: March 14, 2019

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